Supreme Court, U.S.
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No. 05-

IN THE

Supreme Court of the United States

IN RE: URBAN BROADCASTING CORPORATION

THEODORE M. WHITE,

Petitioner,

v.

UNIVISION OF VIRGINIA, INC., *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Court of Appeals improperly held that prior state court litigation precluded the Petitioner from having standing to appeal from orders entered by the bankruptcy court when the Petitioner was not a party to that litigation and the litigation was not addressed in the appeal before the district court.

2. Whether the Petitioner waived his right to appeal from orders entered by a bankruptcy court when he failed to file a formal objection to a proof of claim but did file a timely appeal from the order allowing the proof of claim.

LIST OF PARTIES

Petitioner is Theodore M. White, the appellant below. Respondents are Univision of Virginia, Inc., Stanley M. Salus, Chapter 7 Trustee, and the Office of the United States Trustee.

TABLE OF CONTENTS

	Page
Questions Presented	i
List of Parties	ii
Table of Contents	iii
Table of Cited Authorities	v
Table of Appendices	vii
Opinions Below	1
Statement of Jurisdiction	1
Statutory Provisions Involved	2
Statement of the Case	3
A. The Parties	3
B. The Put and Call Agreement	3
C. UBC's First Bankruptcy Filing and the Dispute Concerning the Station's Operating Power	4
D. UBC's Second Bankruptcy Filing and the Univision Proof of Claim	7

Contents

Page

E. The Trustee's Proposed Distribution to Mr. White and Univision 9

F. Appellate History 14

Reasons for Granting the Petition 17

I. The Court Should Grant The Petition Because The Court Of Appeals Improperly Held That Prior State Court Litigation Precluded The Petitioner From Having Standing To Appeal From Orders Entered By The Bankruptcy Court When The Petitioner Was Not A Party To That Litigation And The Litigation Was Not Addressed In The Appeal Before The District Court. 17

II. The Court Should Grant The Petition Because The Court Of Appeals Improperly Held Petitioner Waived His Right To Appeal From Orders Entered By A Bankruptcy Court When He Failed To File A Formal Objection To A Proof Of Claim But Did File A Timely Appeal From The Order Allowing The Proof Of Claim. 20

Conclusion 22

TABLE OF CITED AUTHORITIES

Page

Cases:

AMF Bowling Worldwide, Inc.
v. Herricks Fore Plan, Inc.
(In re AMF Bowling Worldwide, Inc.),
278 B.R. 96 (Bankr. E.D. Va. 2002) 20

In re Commercial Western Finance Corp.,
761 F.2d 1329 (9th Cir. 1985) 17

In re Dykes v. General Motors Acceptance Corp.
(In re Dykes), 10 F.3d 184 (3rd Cir. 1993) 19

First Union Commercial Corp.
v. Nelsons, Mullins Riley & Scarborough
(In re Varat Enterprises, Inc.),
81 F.3d 1310 (4th Cir. 1996) 20

In re Fondiller v. Robertson,
707 F.2d 441 (9th Cir. 1983) 18

In re Lopez v. Behle
(In re American Ready Mix, Inc.),
14 F.3d 1497 (10th Cir. 1993) 19

In re Schultz Manufacturing Fabricating Co.,
956 F.2d 686 (7th Cir. 1991) 17

U.S. Trustee v. Clark (In re Clark),
927 F.2d 793 (4th Cir. 1991) 14, 18

Cited Authorities

Page

In re Weston,
18 F.3d 860 (10th Cir. 1994) 17

White v. Univision of Virginia, Inc.
(In re Urban Broadcasting Corp.),
304 B.R. 263 (E.D. Va. 2004) 1

White v. Univision of Virginia, Inc.
(In re Urban Broadcasting Corp.),
401 F.3d 236 (4th Cir. 2005) 1

TABLE OF APPENDICES

Page

Appendix A — Opinion Of The United States Court Of Appeals For The Fourth Circuit Decided March 11, 2005 ..... 1a

Appendix B — Memorandum Opinion Of The United States District Court For The Eastern District Of Virginia, Alexandria Division Dated And Filed January 28, 2004 ..... 22a

Appendix C — Order Of The United States Court Of Appeals For The Fourth Circuit Denying Petition For Rehearing Filed April 8, 2005 ..... 42a

Theodore M. White ("Mr. White") respectfully petitions for a writ of certiorari in this case to review the judgment of the United States Court of Appeals for the Fourth Circuit

OPINIONS BELOW

The April 8, 2005 Order denying Mr. White's Petition for Rehearing is reproduced in Appendix C. The March 11, 2005 opinion of the United States Court of Appeals for the Fourth Circuit affirming the decision of the United States District Court for the Eastern District of Virginia is reproduced in Appendix A and is reported at 401 F.3d 236 (4th Cir. 2005). The decision of the United States District Court for the District of Virginia is reproduced in Appendix B and is reported at 304 B.R. 263 (E.D. Va. 2004).

STATEMENT OF JURISDICTION

This is an appeal from a judgment of the United States Court of Appeals for the Fourth Circuit affirming a decision of the United States District Court for the Eastern District of Virginia. The judgment of the United States Court of Appeals was entered on March 11, 2005. The order denying the Petitioner's petition for rehearing was entered on April 8, 2005. The Court has jurisdiction over this petition pursuant to 28 U.S.C.A. § 1254.

STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 158 reads, in relevant part:

> (a) The district courts of the United States shall have jurisdiction to hear appeals [FN1]
>
> > (1) from final judgments, orders, and decrees;
> >
> > (2) from interlocutory orders and decrees issued under section 1121(d) of title 11 increasing or reducing the time periods referred to in section 1121 of such title; and
> >
> > (3) with leave of the court, from other interlocutory orders and decrees;
>
> and, with leave of the court, from interlocutory orders and decrees, of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges under section 157 of this title. An appeal under this subsection shall be taken only to the district court for the judicial district in which the bankruptcy judge is serving.

STATEMENT OF THE CASE

A. The Parties

Petitioner, Mr. White, is the majority shareholder of Urban Broadcasting Corporation ("UBC"). Joint Appendix ("JA.") 2155. UBC, which Mr. White formed in 1989, was the owner and operator of a UHF television station in the Washington D.C. area, Channel 14 WMTW ("Channel 14" or the "Station"). J.A. 2155. Shortly after UBC was incorporated, Mr. White and Silver King Broadcasting of Virginia, Inc. ("Silver King") entered into an August 21, 1989 Shareholder Agreement (the "Shareholder Agreement"), which resulted in Mr. White owning 55% of UBC and Silver King owning the remaining 45%. J.A. 2155-56. Respondent, Univision of Virginia, Inc. claims to be the successor to Silver King.

B. The Put and Call Agreement

UBC, Silver King and Mr. White also entered into an August 21, 1989 Right of First Refusal and Put and Call Agreement (the "Put and Call Agreement"). J.A. 132. The Put and Call Agreement contemplated that UBC would enter into an affiliation agreement with the Home Shopping Network (the "Home Shopping Network") to telecast Home Shopping Network programming on Channel 14. Consistent with the parties' expectation, UBC entered into a June 16, 1990 Television Affiliation Agreement (the "Affiliation Agreement") with Home Shopping Club, Inc. ("HSC"), which like Silver King was a subsidiary of the Home Shopping Network. J.A. 150-51. Under the terms of the Affiliation Agreement, HSC paid UBC for broadcasting HSC's "Home Shopping Spree" on Channel 14. J.A. 157.

Almost all of Channel 14's programming was devoted to broadcasting the Home Shopping Spree. J.A. 156-57.

Because of Channel 14's reliance on the Home Shopping Network, the Put and Call Agreement provided that Mr. White could purchase ("call") Silver King's forty-five percent (45%) interest in UBC for the nominal sum of ten dollars ($10.00) "if there is a default in the compensation payment by HSN under any affiliation agreement entered into with [UBC] that remains uncured for thirty (30) days after receipt of written notice by HSN." J.A. 423

The Put and Call Agreement contained a related "put option" under which Silver King could require UBC to redeem its 45% stock interest in UBC upon certain specified events, including UBC's breach of any affiliation agreement with Home Shopping Network. J.A. 137. The "call" and the "put" options were mutually exclusive. If Mr. White exercised the "call" and purchased Silver King's 45% interest in UBC, Silver King no longer could exercise the "put" because it no longer owned any UBC stock; conversely, if Silver King exercised the "put" and its stock was redeemed by UBC, Mr. White's "call" right would be extinguished because Silver King no longer held any stock which Mr. White could purchase.

C. UBC's First Bankruptcy Filing and the Dispute Concerning the Station's Operating Power

Litigation later arose between UBC and Silver King regarding the repayment of construction financing which Silver King had provided. J.A. 1963. In July of 1995, UBC was forced to file its first Chapter 11 bankruptcy case. J.A. 1964. In this first bankruptcy, the other Home Shopping